IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/12/2003

CORAM

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HON'BLE MR.JUSTICE S.R.SINGHARAVELU

T.C.No.250 of 1999

The Commissioner of Income Tax,
Coimbatore. ..Petitioner

-Vs-

M/s Seshasayee Paper & Board Ltd.,
Erode-7. ..Respondents

Tax Case reference under Sec.256 (1) of the Income-tax Act, 1961,
against the order of the Income-tax Appellate Tribunal, 'B' Bench, Madras,
dated 19.10.1993, made in R.A.No.1549/Mds/91 in ITA No.2657/Mds/8 7.

!For petitioner : Mr.K.Subramanian,
Sr. Standing Counsel for
I.T. Department.

^For respondent : Mr.V.Ramachandran,
Senior Counsel
for Ms. Anitha Sumanth

:ORDER

(The order of the Court was made
by R.JAYASIMHA BABU, J.)

The question referred is "whether the Tribunal is right in holding that the assessee is entitlted to interest under Section 244 (1A) of the Income-tax Act where the refund arises out of the advance tax paid by the assessee beyond the previous year under first proviso to Section 212 (3A) of the Income-tax Act?". The Assessment Year is 1975-76 .

2. The assessment of the assessee's income for the assessment year 1 975-76 was made on 28.8.1978 and all the amounts that had been paid by the assessee towards advance tax including the sum of Rs.1,47,76,64 0/-, which amount had been paid as advance tax in January 1976, after obtaining the permission of the Commissioner who was empowered to extend the period for payment of that instalment of the advance tax by 30 days was adjusted towards the amount of the tax that was assessed by the assessing officer. The

assessing officer declined to grant interest on this amount which had become excess after the consequential order came to be made after the assessee's appeal in respect of this sum was allowed on the ground that the amount had been paid after the closure of the financial year and, therefore, interest under Section 214 was not required to be paid on that sum.

3. On the assessee's appeal, the Commissioner directed the payment of interest under Section 214, but that order of the Commissioner was set aside by the Tribunal, which upheld the view of the assessing officer that interest under Section 214 was not payable in respect of the amount of advance tax paid after the closure of the financial year.

4. The Tribunal, however, considered the assessee's right to receive interest under Section 244 (1A) and held that interest under that provision could not be denied to the assessee.

5. It is contended for the Revenue that as this amount had been paid as advance tax before the order of assessment was made, the assessee is not entitled to any interest under Section 244 (1A) which only refers to payments made "in pursuance of any order of assessment" if any part of the amount so paid is found on appeal to be in excess of the amount which the assessee is liable to pay.

6. When advance tax is paid, the amount so paid is required to be adjusted against the tax that would be assessed on the assessee at the time of assessment. When such adjustment is made, the amount is ' paid' as tax pursuant to the order of assessment. The advance tax does not retain the character of advance tax for all times. The amount paid as advance tax is an advance only till the assessment and on assessment, the amount paid becomes the tax that is paid by the assessee. The words "in pursuance of" in the provision does not imply that the payment of the amount should have been made subsequent to the order of assessment. Those words are only meant to clarify that the amount of excess on which the interest is to be paid under that section is an amount which is in excess of the amount which has been assessed as tax after the appellate order.

7. If we were to accept the construction sought to be placed on this provision by the Revenue, it would result in the denial of any interest to an assessee even after the assessee succeeds in appeal on the sole ground that the amount had been paid before the assessment and not subsequent to the assessment, when the very object of the payment of advance tax is to pay the tax that would be determined as payable in future, in advance.

8. So far as the significance of the word "paid" in that provision is concerned, having regard to the reference to payment of tax being pursuant to an order of assessment that word can at best be regarded as implying that it is the date of the order of assessment which is to be regarded as the date on which the payment was made as the adjustment made of the advance tax towards the tax assessed would result in the discharge of the liability of the assessee for the payment of the assessed tax and such discharge can only be on account of the assessee having paid the tax. Payment does not necessarily

imply that the amount should have been paid only by cash or cheque on the date it is regarded as having been paid. Payment can also be by way of adjustment from an amount which is already available with the Department against the liability as determined in the order of assessment. On any such adjustment being made, the amount adjusted becomes the tax paid pursuant to the order of assessment.

9. We, therefore, see no error in the order of the Tribunal directing payment of interest under Section 244 (1A). The question referred is answered in favour of the assessee and against the Revenue. The assessee shall be entitled to cost in the sum of Rs.3,000/-.

Index: Yes
Website: Yes

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan,
III Floor, Besant Nagar,
Madras-90. (with records) (5 copies)

2.The Secretary,
Central Board of Revenue,
New Delhi. (3 copies)

3.The Commissioner of Income Tax,
Coimbatore.

4.The Commissioner of Income-tax,
(Appeals), Coimbatore.

5.The Income-tax Officer,
Circle 1 (1), Salem.

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